

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, SOUTHERN DIVISION

UNITED STATES OF AMERICA        )  
                                      )  
                                      )  
v.                                )      CRIMINAL ACTION NO.  
                                      )      1:06cr107-MHT  
MICHAEL D. HARVEY                )

ORDER

This cause is before the court on defendant Michael D. Harvey's motion to continue. For the reasons set forth below, the court finds that jury selection and trial, now set for October 30, 2006, should be continued pursuant to 18 U.S.C. § 3161(h)(8).

While the granting of a continuance is left to the sound discretion of the trial judge, United States v. Stitzer, 785 F.2d 1506, 1516 (11th Cir. 1986), the court is limited by the requirements of the Speedy Trial Act, 18 U.S.C. § 3161. The Act provides in part:

"In any case in which a plea of not guilty is entered, the trial of a defendant charged in an information or indictment with the commission of an

offense shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs."

Id. § 3161(c)(1). The Act excludes from the 70-day period any continuance based on "findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." Id. § 3161(h)(8)(A). In granting such a continuance, the court may consider, among other factors, whether the failure to grant the continuance "would deny counsel for the defendant ... reasonable time necessary for effective preparation, taking into account the exercise of due diligence." Id. § 3161(h)(8)(B)(iv).

The court concludes that, in this case, the ends of justice served by granting a continuance outweigh the interest of the public and Harvey in a speedy trial. Counsel for Harvey is continuing in his efforts to gather Harvey's personal and mental-health information, nearly

all of which is located out of state, where Harvey resided prior to his arrest. The information counsel seeks will be of use in resolving Harvey's pending motion to suppress statements he made at the time of his arrest, in assessing his competence, in his plea negotiations, and in sentencing. The government does not oppose a continuance in this case.

Accordingly, it is ORDERED as follows:

(1) Defendant Michael D. Harvey's motion for continuance (doc. no. 33) is granted.

(2) The jury selection and trial, now set for October 30, 2006, are reset for February 5, 2007, at 10:00 a.m., in Courtroom 2FMJ of the Frank M. Johnson Jr. United States Courthouse Complex, One Church Street, Montgomery, Alabama.

DONE, this the 18th day of October, 2006.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE